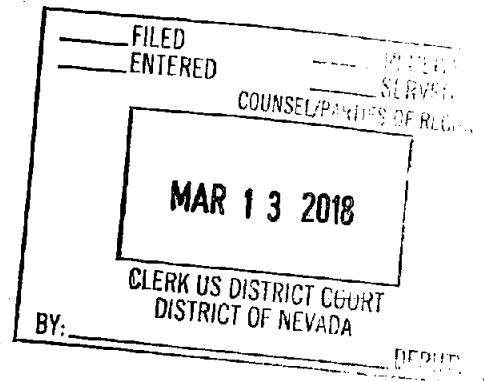


Richard Allen Denson
 Name
1058541
 Prison Number
Southern Desert Correctional Center
 Place of Confinement



UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

RICHARD ALLEN DENSON Petitioner,)
 (Full Name))

vs.)

DWIGHT MEVEN, et al., Respondent,)
 (Name of Warden, Superintendent, jailor or)
 authorized person having custody of petitioner))

and)

The Attorney General of the State of Nevada)

CASE NO. 2:15-cv-01473-APG-PAL
 (To be supplied by the Clerk)

AMENDED

**PETITION FOR A
 WRIT OF HABEAS CORPUS
 PURSUANT TO 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY
 (NOT SENTENCED TO DEATH)**

1. Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: District Court Clark County Hon. Judge Barker Dept. No XV111
2. Full date judgment of conviction was entered: 10/07/10. (month/day/year)
3. Did you appeal the conviction? X Yes ___ No. Date appeal decided: 07/14/15.
4. Did you file a petition for post-conviction relief or petition for habeas corpus in the state court?
X Yes ___ No. If yes, name the court and date the petition was filed: District Court
(Clark) Dept. XV111 09/26/11. Did you appeal from the denial of the petition for
 post-conviction relief or petition for writ of habeas corpus? X Yes ___ No. Date the appeal
 was decided: 08/20/15. Have all of the grounds stated in this petition been presented to the
 state supreme court? ___ Yes ___ No. If no, which grounds have not? _____
5. Date you are mailing (or handing to correctional officer) this petition to this court: 03/09/18.
Attach to this petition a copy of all state court written decisions regarding this conviction.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? ☒ Yes
 ___ No. If no, what was the prior case number? _____. And in what court was
 the prior action filed? _____.
- Was the prior action ___ denied on the merits or ___ dismissed for procedural reasons (check
 one). Date of decision: ____/____/____. Are any of the issues in this petition raised in the
 prior petition? ___ Yes ___ No. If the prior case was denied on the merits, has the Ninth
 Circuit Court of Appeals given you permission to file this successive petition? ___ Yes ___ No.
7. Do you have any petition, application, motion or appeal (or by any other means) now pending in
 any court regarding the conviction that you are challenging in this action? ___ Yes ☒ No.
 If yes, state the name of the court and the nature of the proceedings: _____.
8. Case number of the judgment of conviction being challenged: C257081.
9. Length and terms of sentence(s): 10 years to Life.
10. Start date and projected release date: _____.
11. What was (were) the offense(s) for which you were convicted: Habitual Criminal
NR5 207.010.
12. What was your plea? ☒ Guilty ___ Not Guilty ___ Nolo Contendere. If you pleaded guilty
 or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:
"Large" habitual - argue concurrent consecutive to case no. C257359.
13. Who was the attorney that represented you in the proceedings in state court? Identify whether
 the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	<u>Cynthia Dustin</u>	<input checked="" type="checkbox"/>	___	___
trial/guilty plea	<u>" "</u>	<input checked="" type="checkbox"/>	___	___
sentencing	<u>" "</u>	<input checked="" type="checkbox"/>	___	___
direct appeal	<u>David Figler</u>	<input checked="" type="checkbox"/>	___	___
1st post-conviction petition	<u>Richard Denson</u>	___	___	<input checked="" type="checkbox"/>
appeal from post conviction	<u>David Figler</u>	<input checked="" type="checkbox"/>	___	___
2nd post-conviction petition	<u>N/A</u>	___	___	___
appeal from 2nd post-conviction	<u>N/A</u>	___	___	___

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to Counsel (Effective), based on these facts:

Amended

¶1 State appointed counsel Ms. Cynthia Dustin was ineffective pursuant to the standards in Strickland v Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct 2052 (1984). In that: (1), failed to review information relevant to sentencing; (2), failed to provide mitigation in support of CONCURRENT sentences; (3), failed to submit both errors and findings to the Court in the Pre-sentence Investigation Report (P.S.I.) and failed to expose the Judgment of Convictions (JOC) to investigation(s). As previously exhausted in State court..

¶2 (1) & (2) Mitigation and Review

Ms. Dustin (hereinafter "counsel") failed to provide, submit, relate, or reiterate, a shred of mitigation to the Court at the sentencing hearing. Counsel stated "... there are no crimes per se of violence..." (Sentencing Transcript at pg. 4). When in fact nowhere in the criminal history of my records does violence appear. The Court notified counsel that its inclination was to run case no C257081 (this case) "wild" with my previous case (C257359). Counsel should have known my history other than my criminal history. Yet, when the time presented itself counsel simply recited what would take place if I was to receive consecutive habitual criminal sentences.

Next page at 3(a) —

Exhaustion of state court remedies regarding Ground 1:

GROUND 1

(continued)

¶3. In open court, counsel was asked to submit "one thing that this man has done in his adult life that is a positive thing, just tell me one, because I don't see it" (S.T. at pg. 10). One thing, the judge asks counsel for one thing "because [he] don't see it". Counsel makes no relevant response. Even though, not only did numerous "things" exist but they were known. For example: A), I worked numerous years or how else could I have collected unemployment insurance?. B), I had an Honorable Discharge from probation in Utah. C), I have (had at time of sentence) marketable skills, I was a certified welder. D), I worked in the Uranium mines in Utah. E), I am an artist. F), I married a woman with children and helped both financially and emotionally in their raising. F), My own childhood was from a broken home from age 11 on. (Et.al.)

¶4 Yet, counsel remained silent at the time of my sentencing. See Strickland 466 U.S. at 690, 104 S.Ct at 2006. (Reviewing Court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct") (emphasis added). In my case, counsel's conduct was far less than reasonable. In light of the possible sentence. And, my particular case history provided no violent offenses, with a significant number remote in nature, perpetrated, while I was in my teens. Again, counsel (at that time) submitted nothing.¹

¶5. I submit to this Court, my attached Declaration in support of the mitigators present at the time of my sentencing. Also, why I had not been more proactive in there application or submission to the sentencing court. As afore-mentioned, the judge asked for one thing. What if, several things had been offered? At that moment, I assert, in his discretion, the judge would have seen me as the prosecutor had seen me in our one on one prior to sentencing. —————

FNI I realize I was granted an Evidentiary Hearing in state district court. And, that hearing touched (however briefly) upon my I.A.C. claim. But, I would respectfully submit, based on the record, that Judge Barker at the time of sentencing, was seeking positive input in his discretionary review. Why else would he put counsel on notice by his questioning?

GROUND 1

(Continued)

¶6. Mr. Scow (Prosecutor) noted to the Court that after he spoke to me the State would not argue for consecutive sentences.² Counsel never once put that discussion to the Court, as relevant. At that time, what was so compelling that would have the State relinquish its right to argue for consecutive sentences? The State briefly touched upon this.³ However, Counsel did not.

¶7 Instead, counsel states (as the record shows) in pertinent part, "[a]nd I [counsel] understand he's got a lengthy criminal history, but there's no violence, he's not pushing drugs to kids, he's not robbing people at gunpoint";⁴ I would submit that had I, "push[ed] drugs [on] kids", or, "robbed people at gunpoint" this §2254 would NOT be attempted. Despite what Judge Barker required of counsel, "one thing" positive, this, is what I got. I respectfully would assert this is contrary to reasonable. See Strickland, 466 U.S. at 686-87, 109 S.Ct at 2063-64. And, prejudiced any hope I had (and, the Judge expressed at that time)⁵ of concurrent sentences. See Strickland, 466 U.S. at 687 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome") *Id.* (Embolden emphasis added).

¶8 I do concede the point that counsel indicated that she reviewed the certified JOC's presented by the State to determine whether they met the basic constitutional requirements (S.T. at pg 3). However, counsel's determination as to the specific nature of the charged offenses, when they occurred, and the dispositions went overlooked. Inasmuch as supporting a concurrent sentence. A reasonable presentation of a synopsis of the nonviolent offenses and the over 25 year old convictions went ignored.

FN2 See (S.T. at pg 56, Oct 7 2010). Also: the Presentence Investigation Report at page 2, under III PLEA NEGOTIATIONS, noted "The State retains the right to argue at rendition of sentence including for consecutive time to Case No C257081."

FN3 See Sentencing Transcripts at pg. 5 Oct. 9, 2010

FN4 Recorder's Transcript RE: Sentencing, 8-10 October 4, 2010.

FN5 I would respectfully note that Judge Barker's demeanor at the initial sentencing was never combative towards me. I also note that my sentencing was originally dated 9/27/2010, but extended to 10/4/2010 so that counsel could confer with me —, however, that conference never took place. (See Declaration at 1).
36

GROUND 1

(continued)

Pg.

(3) Presentence Investigation Report

The P.S.I. report was submitted to counsel. I use it to show how both errors and findings went ignored by counsel. In these factual allegations lie the supposition that counsel did not review the report, or, reviewed it with only minimal attention to the details.

- A). Sentencing Date incorrect, actual date: Oct. 4, 2010 Pg. 1
- B). Childhood "... raised by his mother ..." Pg. 2
- C). Married Pg. 2
- D). Children "... ages 13, 17 & 18 ..." Pg. 2
- E). Institutional / Supervision Adjustment "... successfully ..." Pg. 6
Prac Terms, Honorable 1 Pg. 3
- F). Employment History "... working as a Carpenter for the past 6 years. Before that ... Uranium miner in Utah for about 2 years. He also ... artist ... portrait / picture artist. Pg. 3

10. The report designates the Honorable Michael Villani in Dept. no XV11. Also "... including for consecutive time to Case No C257081 ..." under the sub-heading III PLEA NEGOTIATIONS. I respectfully point-out that even a cursory review would note the above-mentioned. The supportive information to further the ~~concurrent~~ sentence discussion. When "one thing" was requested. I point to several factually available things. Employment History — I was a tax payer, is that not contributory to society. Or, completing "successfully" a prior supervision. Mitigator? Yet, counsel did not even mention these. It is a wonder if she read the P.S.I.? I include, the sub-heading III PLEA NEGOTIATIONS — why counsel did not comment on the States apparent reversal on arguing for ²⁰ consecutive sentences. This after I spoke to Mr Scow. Yet, nothing.

11. I received a consecutive 8 to 20 years to 10 to Life which is typically reserved for the most heinous crimes. I fully understand that adjudicating to habitual status was proper. However, to stack consecutive habitual statutory sentences when raising the 8 to 20-years concurrently to the 10 years to Life would have enhanced the sentence accordingly, to my mitigation. Which, to my detriment went unheard.

GROUND 1

(continued)

¶11. I understand that opposition to the reference to the P.S.I. being ignored is to say that it was part of the record. Therein, it is assumed the Court reviewed its contents. Even so, I would simply say why the question put to counsel? If the court had known that more than one positive thing had existed? I would respectfully submit that the Court may have overlooked my P.S.I.. If so, then the judge abused his discretion. But, I point-out, once again, that his discretion was overly influenced by counsel's ineffective (missing) representation of both the errors and factual findings in the P.S.I.. Respectfully.

¶12.

(4) Judgment Of Convictions

"And I understand that he's got a lengthy criminal history . . . " (Recorder's Transcript RE: Sentencing, 8-10 October 4, 2010). I stipulated to a ~~second~~ habitual criminal statute charge (NRS 207.010). It goes without saying "He's got a lengthy criminal history". That, is the extent of counsel's investigation. It's factual. It's direct. It's in the record. This one sentence covers the States introduction of J.O.C.'s from the States of: Montana (1984-1991); Nebraska (1994); Wyoming (1995); a break of 13 years, Utah (2008). I agreed to being adjudicated an habitual criminal, that, should have allowed counsel more than an opportunity.

¶13. The Court stated "So Ms Dustin has had the opportunity to review and determine whether or not they [prior convictions] meet the basic constitutional — they're constitutionally firm." (Recorder's Transcripts RE: Sentencing, 3 Oct. 4 2010). My question goes to, my pleading guilty should have freed counsel to review the ramble nature of the Montana convictions, the nonviolent nature of ALL my cases, the break of some 13 years inbetween offenses, AND, what I did positive. This, I respectfully would submit, warranted more than one sentence.

GROUND 1

(Continued)

¶14.

Conclusion / Remedy

The Sixth Amendment has been interpreted to require effective assistance of counsel in criminal cases. This interpretation has been extended to include sentencing. I am not a lawyer. I have limited resources and access to legal materials. However, the United States Supreme Court in Strickland mandated certain things. In these things someone (like me) must show unreasonable assistance and the prejudice that resulted from this unreasonable assistance.

¶15 I preface by saying, I do not seek dismissal of my charges. I know what I did. I do NOT request this Court to alter guilt adjudications, by me. No. What I respectfully request, is that I be given effective assistance to submit my case in case no. C25 7081 and show what "positive things" I had done. With these mitigators, I would show that ~~any~~ reasonable person would have no confidence in imposing consecutive habitual criminal charges

¶16. However, I know this would be argued has been done in a subsequent evidentiary hearing. Wherein, Judge Barker remained the same. But, Strickland mandates that my particular case must be "reviewed as of the time of counsel's conduct". (Supra at page 3a, ¶4). Which, allows this Court to take into consideration Judge Barker's reasoning for asking counsel to name "~~one~~ thing that this man has done in his adult life that is a positive thing" (the Judge goes even further) ("just one thing"). "JUST TELL ME ONE" (and clarifies his review) "because I DON'T SEE IT" (EMPHASIS added).

GROUND 1

(continued)

§17. One thing existed. In fact, more than one thing existed. Counsel was asked a direct question. But, because she ~~unreason-~~ably failed to investigate my case facts her colloquy to the Court prejudiced any concurrent sentence. Thus, case no C257081, 10 to Life, was run consecutive to case no C257359 of 8 to 20 years. Effectively giving me an 18 year to life sentence. Based on the lack of offering "one thing" in mitigation.

§18. I humbly request that this Honorable Court find that, based on the foregoing and any/all pleadings, papers or evidence that: Counsel was ineffective, therein, prejudicing the outcome at sentencing. That outcome, being to run both habitual criminal statutes concurrent giving me a 10 year to LIFE term. As opposed to consecutive sentences.

In the alternative:

Any relief the Honorable Court deems appropriate.

Respectfully,

Rich Denson

RICHARD ALLEN DENSON

Petitioner

In Propria Persona

14 11

14 11

14 11

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

☒ Yes ___ No. If no, explain why not: _____

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

☒ Yes ___ No. If no, explain why not: _____

If yes, name of court: Clark County Dist. Ct./Ct of Appls date petition filed 09 / 26 / 11

Did you receive an evidentiary hearing? ☒ Yes ___ No. Did you appeal to the Nevada Supreme Court? ☒ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ☒ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction: N/A**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ___ / ___ / ___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ☒ Yes ___ No. If yes,

explain: This is an Amended filing to my initial § 2254

State concisely every ground for which you claim that the state court conviction and/or sentence is

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Fourteenth Amendment right to Due Process of Law, based on these facts:

Judge David B. Barker abused his discretion when imposing consecutive sentences.

§1 At sentencing Judge Barker demanded of Defense counsel that she name "one thing that this man has done in his adult life that is a positive thing, just tell me one, because I don't see it" (Sentencing Transcripts at pg. 10) (underlined emphasis added)

§2 Just prior to imposing sentence the Judge states: "on all the information we've talked here about" (Sentencing Transcript at pg. 11) (underlined emphasis added)

§3 Judge Barker (based on this record) sentences me to 10 years to LIFE under NRS 207.010 CONSECUTIVE to 8 years to 20 years under NRS 207.010. Multiple habitual criminal enhancements to be run "wild". The Judge never reviewed the Presentence Investigation Report (or, why the question to defense counsel)? More than "one thing" existed that factually and facially showed to be "positive."

§4 Undoubtedly it would be asserted that the Judge did review the P.S.I. and found it wanting. However, mitigators are defined. Why the need for a P.S.I. if discretion overrules mitigation. It does not. Therefore, my listed mitigators answers the Judge's question and his imposition of CONSECUTIVE sentences abuses the discretion afforded him in this instance. Respectfully,

Exhaustion of state court remedies regarding Ground 2:

• **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

☒ Yes ___ No. If no, explain why not: _____

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

☒ Yes ___ No. If no, explain why not: _____

If yes, name of court: Clark County Dist. Ct / Ct of Appls. date petition filed 09/26/11
07/14/15

Did you receive an evidentiary hearing? ☒ Yes ___ No. Did you appeal to the Nevada Supreme Court? ☒ Yes ___ No. If no, explain why not: Court of Appeals

If yes, did you raise this issue? ☒ Yes ___ No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ___/___/___

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ☒ Yes ___ No. If yes, explain: Amended previous 92254

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

DECLARATION

28 U.S.C.A § 1746

I, Richard Allen Denson, do hereby declare the following:

- 1) My sentencing date as reflected in the P.S.I. was extended 1 week so that Ms. Cynthia Doston could talk to me. In that 1 week she never got in contact with me;
- 2) At sentencing counsel said: "~~there is no way that you'll get consecutive time for non-violent crime committed during a recession it will never happen the DA gave us a guarantee~~" concerning consecutive sentences in case no.s C257081 and C257359;
- 3) At the time of sentencing I had mitigations in the form of: 2006 I purchased a home in Tooele, Utah. I used the money I made as a contractor and miner \$10,000.00 legitimate down payment; I owned 2 cars and paid insurance and maintained a valid driver's license. From 1/2008 to 10/2008 I completed "Consecut Morris school of Pealing; In 2003, I worked as a subcontractor (Licensed in Montana) doing general concrete - working for the City of Great Falls Montana - Verified ALL of the above Mitigators.
 - I can provide further verifiable mitigations (Phoenix Construction)

UNDER THE PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief in accordance with NRS § 208.165 and 28 U.S.C.A. § 1746.

EXECUTED ON THIS 9th DAY OF MARCH 2018

Rich Denson

RICHARD ALLEN DENSON

NDOC No. 1050541

Southern Desert Correctional Center

P.O. Box 208

Indian Springs, NV. 89070

CERTIFICATE OF SERVICE

I, Richard A Denson, hereby certify that I am the
Petitioner in this matter and I am representing myself *in propria persona*.

On this 9th day of March, _____, I served copies of
the Petition (28 U.S.C. § 2254)

in Case No. 2:15-cv-01473-APG-PAL and placed said document(s) in the United States
Mail, first-class postage prepaid, addressed as follows:

U.S. District Court
233 Las Vegas Blvd South
Las Vegas NV. 89101
Clerk of the Court

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the Petitioner in the
above-entitled action, and he has read this Certificate of Service and the information
contained therein is true and correct.

Executed pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1621 at
Southern Desert Correctional Center on this 9th day of
March, 2018

Rich Denson

Richard Allen Denson

Petitioner - *in propria persona*

DOC No 1058541

Richard Smith W/Petitioner
(Name of person who wrote this
complaint if not Plaintiff)

Rich Denson
(Signature of Plaintiff)

March 9th 2018
(Date)

N/A
(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.
See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at Southern Desert Correctional Center on March 9th 2018
(Location) (Date)

Rich Denson
(Signature)

1058541
(Inmate prison number)

Richard A. Denson
S.D.C.C.

P.O. Box 208

Indian Springs, NV. 89070

In Propria Persona

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ALLEN DENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66064

FILED

JUL 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal filed under NRAP 4(c) from a judgment of conviction entered pursuant to a guilty plea. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Richard Denson contends his guilty plea is invalid because his plea was rushed, he did not consult with one of his counsel, he was coerced into pleading guilty, he did not understand what "stipulation" meant, and the plea canvass was not thorough enough. However, challenges to the validity of a guilty plea must be raised in the district court in the first instance, *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), unless the error clearly appears from the record, *Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994). Denson did not file a presentence motion to withdraw his guilty plea nor has he demonstrated the alleged errors clearly appear from the record. Therefore, this claim is improperly raised in his appeal from the judgment of conviction and we decline to review this claim.

Second, Denson claims the district court abused its discretion by adjudicating him a habitual criminal because it failed to consider the

remoteness and nonviolent nature of his prior convictions. Denson also claims the district court failed to explain why habitual criminal adjudication was just and proper.


The habitual criminal statute makes no special allowance for non-violent crimes or for the remoteness of the prior convictions; these are merely considerations within the discretion of the district court. *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Further, while due process requires a sentencing court to exercise its discretion before adjudicating a defendant a habitual criminal, it is not required to make particularized findings that it is "just and proper" to impose a habitual criminal adjudication. *Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000). "[A]s long as the record as a whole indicates that the sentencing court was not operating under a misconception of the law regarding the discretionary nature of a habitual criminal adjudication and that the court exercised its discretion, the sentencing court has met its obligation under Nevada law." *Id.* at 333, 996 P.2d at 893-94.

Here, the district court knew that Denson had stipulated to "large" habitual criminal treatment, listened to argument of counsel, reviewed numerous prior convictions that spanned 24 years and 5 states, and learned Denson had been arrested on new felony charges while on bail in this case. The district court found Denson was eligible for habitual criminal adjudication, his criminal history was extensive and long, and determined he was a continuing threat to the community. Nothing in the record suggests the district court misunderstood the discretionary nature of the habitual criminal adjudication or failed to exercise its discretion.

To the extent Denson claims the district court erred by ordering his sentence to be served consecutive to another case, Denson

fails to demonstrate the district court abused its discretion. See NRS 176.035(1); *Pitmon v. State*, 131 Nev. ___, ___ P.3d ___ (Adv. Op. No. 16, March 26, 2015, at 6); *Warden, Nev. State Prison v. Peters*, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). Further, Denson fails to demonstrate that the record demonstrates "prejudice resulting from consideration of information or accusations found on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Therefore, we conclude that Denson is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David B. Barker, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

Richard Denson

NBCE No 1058541

Southern Desert Correctional Center

P.O. Box 2000

Indian Springs, NV 89101

UNITED STATES DISTRICT COURT

333 Las Vegas Blvd - South

Las Vegas, NV 89101

APR 23 1991

ATTN: Clerk Of The Court

Amended 50354

CONFIDENTIAL

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